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Supreme Court, U.S.
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No. _____

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In The

SUPREME COURT of the UNITED STATES

October Term, 1997

Estate of Gianna Blue; Martha Wright-Cox, individually and as Guardian ad Litem for Shauntonese Burris, Nikiya Brady and Lequan Buyard, Minors; Wil Wright; Gregory Johnson; Eric Collins; Terrell Bealey; Londell Henderson; and Barry Hawes,

Petitioners,

vs.

County of Los Angeles, a public entity; Sherman T. Block, Sheriff, individually and as Sheriff of the County of Los Angeles; William Christianson, Lieutenant of the Sheriff's Department of Los Angeles County; Irwin Golden; Shannon Laren and Thomas Drake, individually and in their official capacities as Los Angeles County Sheriff's Deputies,

Respondents

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In a state that recognizes the doctrine of equitable tolling, should the state statute of limitations be applied in a manner which deprives citizens of valuable federal constitutional rights when the defendant which is a local government agency, and the court acknowledge that there would be no prejudice to the defendant if the case was permitted to proceed to trial on the merits?

2. Should a complaint which pleads the application of the doctrine of equitable tolling with specificity, be subject to dismissal pursuant to a Motion to dismiss?

3. Is a litigant's desire to litigate state and federal claims in one forum bad faith and unreasonable conduct for purposes of depriving a litigant of the benefits of the equitable tolling doctrine?

4. Even if a reasonable inquiry would lead to the conclusion that the statute of limitations had run - is that a sufficient basis for Rule 11 sanctions with its chilling effect on citizens pursuing redress for civil rights violations?

PARTIES TO THE PROCEEDINGS

Petitioner Estate of Gianna Blue is the representative of the deceased Gianna Blue.

Petitioner Martha Wright-Cox is the mother of the deceased Gianna Blue

Petitioners Shauntonese Burris, Nakiya Brady, and Lequan Buyard are the minor children of the deceased Gianna Blue.

Petitioner Wil Wright is the father of the deceased Gianna Blue.

Petitioner Gregory Johnson is an individual who was present in the store as a patron with Gianna Blue at the time of the shooting and was placed in fear for his life.

Petitioner Eric Collins is an individual owner of the store at which the shooting occurred.

Petitioners Terrell Bealey, Londell Henderson and Barry Hawes are individuals who were employees of the store and were on duty when the shooting occurred and were each placed in fear for their lives.

Respondent County of Los Angeles is a public entity and a subdivision of the State of California.

Respondent Sherman T. Block, an individual is the Sheriff of Los Angeles County.

Respondent William Christianson, an individual is a

Lieutenant of the Los Angeles County Sheriff's Department.

Respondent Irwin Golden, an individual was the acting head of the Los Angeles County Coroner's office at the time of the shooting of Gianna Blue.

Respondents Shannon Laren and Thomas Drake are the Deputy Sheriffs who shot and killed Gianna Blue.

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Petitioners Estate of Gianna Blue, Martha Wright-Cox, Shauntonese Burris, Nakiya Brady, Wil Wright, Gregory Johnson, Eric Collins, Terrell Bealey, Londell Henderson and Barry Hawes respectfully pray that a Writ of Certiorari issue from this Honorable Court to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on July 21, 1997.

OPINIONS BELOW

This case was dismissed pursuant to a motion to dismiss filed by respondents in the District Court for the Central District of California, before the Honorable James M. Ideman , United States District Judge. The District Court entered written findings. (Appendix C). Petitioners appealed to the Court of Appeals for the Ninth Circuit.

The matter was argued and submitted at Pasadena, California, on June 2, 1997, before a Ninth Circuit panel composed of Mary M. Schroeder, Melvin Brunetti, and Diarmuid F. O'Scannlain, Circuit Judges.

Upon receipt of the decision by the Court of Appeals dated July 21, 1997, Petitioners filed a petition for rehearing and suggestion for rehearing *en banc* on August 11, 1997. That petition was denied by the Court of Appeals in an Order filed September 5, 1997. (Appendix A).

This case was first filed in the United States District Court for the Central District of California on February 9, 1991. The complaint contained state and federal causes of action. In response to a Motion to Dismiss the action filed by Respondents, by order entered July 24, 1991 the court denied the motion as to the federal

Civil Rights claims but granted it and declined to exercise jurisdiction in respect to state causes of action. (Appendix F)

On September 23, 1991 Petitioners filed the state causes of action in the Superior Court of California at Los Angeles, California and on July 30, 1992 added the United States civil rights cause of action to the state case. The respondents demurred to the complaint and after a succession of demurrers to amended complaints the fourth amended complaint was dismissed without leave to amend. Petitioners appealed the dismissal to the California Court of Appeals which sustained the dismissal of state and federal claims. (Appendix E)

Petitioners petitioned for review in the California Supreme Court. The California Supreme Court denied review on December 13, 1995. (Appendix D)

While the case was pending in the California Supreme Court, on November 22, 1995, Petitioners filed the instant case in the United States District Court for the Central District of California. The present action is identical to the federal civil rights claims in Blue I and Blue II.

STATEMENT OF JURISDICTION

Petitioners seek review of the judgment of the Court of Appeals for the Ninth Circuit which was dated and entered July 21, 1997. A petition for rehearing with suggestion for rehearing by the Court *en banc* filed by the petitioners was denied by Order filed September 5, 1997.

This petition for certiorari was filed within ninety

days of the September 5, 1997 order denying petitioner's petition for rehearing.

This court's jurisdiction is invoked under 28 U.S.C. §1254(1). The district court had jurisdiction of this civil rights case under 28 U.S.C. §§ 1331 and 1343(a)(4) and Federal Rules of Civil Procedure, Rule 54(a).

STATUTORY PROVISIONS INVOLVED

The case involves the civil rights law of the United States (42 U.S.C. §§1983 and 1985) and the California doctrine of equitable tolling of the Statute of Limitations.

STATEMENT OF THE CASE

This is a civil rights action. On May 15, 1990, her thirtieth birthday, Gianna Blue, an African-American mother of four children ages two to eleven years old, went to the corner store to buy supplies for her birthday party. While Ms. Blue was in the store, Deputy Sheriffs Shannon Laren and Thomas Drake of the Los Angeles Sheriffs Department, responded to a call of a man in possession of a gun. They opened fire on the store without warning, and killed Ms. Blue. (Appendix E)

On February 8, 1991, the Estate of Gianna Blue, three of her children, her parents, a friend and several employees who were present at the time of the shooting, and the owner of the store ("Petitioners"), filed an action in the United States District Court for the Central District of California against Respondents. The suit alleged causes of action for violation of civil rights (42 U.S.C. §1983), RICO violations (19 U.S.C. §§1961-4), and state

claims for wrongful death, intentional infliction of emotional distress, assault and battery, attempted murder and negligence. ("Blue I" hereinafter)

Respondents moved to dismiss. On July 25, 1991, the district court denied the motion to dismiss Petitioners' civil rights claims, finding Petitioners had alleged sufficient facts to state a cause of action. The court granted Respondents' motion to dismiss Petitioners' RICO claims, and granted Respondents' motion to dismiss Petitioners' pendent state claims, without prejudice. (Appendix F)

On September 23, 1991, Petitioners filed an action in the Los Angeles Superior Court alleging the same causes of action which the district court had dismissed without prejudice. ("Blue II" hereinafter) The superior court subsequently consolidated Blue II with an earlier action filed against Respondents by Ms. Blue's husband and youngest child.(Appendix E)

To consolidate their state and federal lawsuits, on July 30, 1992, Petitioners filed a first amended complaint in Blue II, adding a cause of action for violation of civil rights (42 U.S.C. §1983) identical to that alleged in Blue I. Petitioners then voluntarily dismissed Blue I without prejudice. The Respondents demurred to Petitioners' first amended complaint on the grounds the statute of Limitations had run. Respondents also demurred on the ground that Petitioners' federal civil rights claim failed to allege sufficient facts to state a cause of action, notwithstanding the fact that the United States District Court had found identical pleadings sufficient in Blue I. Respondents made no mention of Blue I in their demurrer. The California Superior Court sustained the demurrer with leave to amend.

Respondents continued to file demurrers to each of Petitioners' successive complaints. The superior court granted Respondent's demurrer to the fourth amended complaint without leave to amend . The court entered dismissal on July 28, 1993. (Appendix E)

Petitioners appealed. The California Court of Appeal affirmed the dismissal, finding Petitioners' federal s Civil Rights claim was barred by the statute of limitations . The court refused to apply equitable tolling to toll the statute of limitations on Petitioners' federal civil rights claim. The court applied equitable tolling to Petitioners' state causes of action but found the statute had still run. (Appendix E) Petitioners petitioned for review in the California Supreme Court. The California Supreme Court denied review on December 13, 1995. (Appendix D)

On November 22, 1995, while Blue II was pending in the California Supreme Court, Petitioners refiled their complaint in the United States District Court for the Central District of California alleging a claim solely for violation of federal civil rights (42 U.S.C. §1983). That action was identical to the civil rights claims in Blue I and Blue II.

Respondents moved to dismiss on the grounds that Petitioners' action was barred by the statute of limitations and the doctrine of res judicata. Respondents further sought sanctions against Petitioners pursuant to ***Rule 11 of the Federal Rules of Civil Procedure***. Petitioners opposed the motion on the grounds that equitable tolling applied to toll the statute of limitations and res judicata did not apply because there had been no determination on the merits in the earlier actions. Petitioners opposed the sanctions on the ground that there was a reasonable basis

for their action to proceed. (Appendix C)

The district court granted Respondents' motion on the ground that Petitioners' action was barred by the statue of limitations, finding that the doctrine of equitable tolling did not apply, and granted Respondents' motion for sanctions. (Appendix C) The order of dismissal was entered on February 22, 1996 and Petitioners filed a timely appeal to the United States Ninth Circuit Court of Appeals on March 20, 1996.

The Ninth Circuit heard oral argument on June 2, 1997 and entered its order on July 21, 1997, affirming the judgment of the district court. (Appendix B)

Petitioners filed a Petition for Rehearing and Request for Rehearing by the court *en banc*. The Petition for Rehearing was denied by order filed September 5, 1997. (Appendix A)

REASONS FOR GRANTING THE WRIT

SUMMARY

The decision of the Ninth Circuit conflicts with the decisions of the second, fifth and tenth circuits as well as other Districts of California courts and other cases within the Ninth circuit in two material respects. First, in failing to give Petitioners the benefit of having their case tried on its merits where there is no prejudice to the Respondents in the interest of justice; and second, in failing to give Petitioners the benefit of the fact that the dismissal should only be granted if the assertions of the complaint read with required liberality would not permit the Petitioners to prove that the statute of limitations was tolled when the

tolling of the statute of limitations was plead in the complaint. This petition presents the public policy question of whether citizens should be deprived of important federal civil rights in circumstances in which the Respondents are not prejudiced by a trial on the merits.

In balancing the burdens on the Petitioners which includes the three minor children and parents of the deceased Gianna Blue against the county of Los Angeles and its Deputy Sheriffs who killed her and who suffer no prejudice by a trial on the merits, the conclusion is inescapable that the equities are with granting the Petitioners a trial on the merits..

When coupled with the fact that the Petitioners' lawsuit was consolidated for trial with the companion case filed by Ms. Blue's husband and youngest child, the lack of prejudice to Respondents becomes even more obvious. (Appendix E, pg A2).

I.
THE PUBLIC POLICY IN PERMITTING TRIAL ON THE MERITS WHENEVER POSSIBLE SHOULD NOT BE UNDERMINED BY STRICT ENFORCEMENT OF STATUTES OF LIMITATION

A. The Ninth Circuit's Opinion Directly Conflicts With The Rules Applied in the First, Second, Fifth and Tenth Circuits And in Other Districts of the California Appellate Court as well As Other Opinions in The Ninth Circuit.

1. Statutes of Limitations Are Designed To Shield Unwary Defendants Against Stale Claims And Was Never Intended To Be A Sword to Protect Violators of The Civil Rights of Citizens From Having To Answer For Their Wrongdoing.

In ***Appalachian Insurance Co. v. McDonnell Douglas Corp. 214 Cal.App.3d 1, 40 (1989)*** a California Court of Appeals held that equitable tolling should apply where the Plaintiffs refiled suit in the Superior Court before the statute of limitations ran but after the statute had run Defendants removed the action to Federal court and subsequently the Plaintiffs dismissed the action and refiled it in the state court. The court held that to preclude the application of equitable tolling would result in the kind of technical unjust forfeiture of a trial on the merits that the equitable tolling doctrine was designed to avoid. ***Appalachia (supra) @ p. 41-42.*** The ***Appalachian*** court also made it clear that under California law the fact that a case was voluntarily dismissed had no bearing on whether or not equitable tolling should apply.

In November 1995 the fourth (4th) District of the California Court of Appeals in ***Structural Steel Fabricators, Inc. v. City of Orange 40 Cal.App4th 459 (1995)*** held that equitable tolling should apply in a case in which the Plaintiff filed suit against a general contractor and a bonding company and obtained a judgment but when the Plaintiff determined that the judgment was not collectible from either the contractor or the bonding company the Plaintiff filed a separate action against the City of Orange based on the same claim long after the statue of limitations had expired. The court held that the doctrine of equitable tolling applied because three elements were present, namely;

a. Timely notice to the city by the timely filing of the first suit;

b. Lack of prejudice to the City; and

c. Reasonable and good faith conduct on the part of the Plaintiff.

The ***Appalachian*** court found that the City had notice sufficient to alert it of the need to begin investigating the facts forming the basis for the Plaintiff's claim against it and had suffered no prejudice from equitable tolling.

The leading case in California setting forth the elements for the application of equitable tolling is ***Addison vs. The State of California 21 Cal.3d 313 (1978)*** in which the California Supreme Court set forth the three prong tests to be applied in determining the applicability of equitable tolling, namely;

a. The claim and first suit was filed on time; which gives the Defendant notice of Plaintiff's claim;

b. No prejudice to Defendant; and

c. Reasonable and good faith conduct on the part of Plaintiff.

The ***Addison (supra)*** court stated that the purpose of equitable tolling is:

> "To soften the harsh impact of technical rules which might otherwise prevent a good faith litigant from having a day in court."

In ***Addison (supra)*** in response to the Defendants' reliance on cases which suggested that litigants must strictly comply with statutes specifying the period for commencement of actions against public entities, such as ***Chase vs. State of California, 67Cal.App.3d*** **808** and ***Charles L. Harney, Inc. vs State of California 217 Cal.App.2d 77 (1963) the*** court stated (@p.320) that:

> "Neither the legislature's action in amending section 352 nor the cases which strictly construe the limitations provisions of the ***Tort Claims Act***, are dispositive of the present case. Here, Appellants not only duly filed their claims with the respective public entities, but they also timely filed their original Federal suit within the statutory period. The present state action asserts the same State law claims that were raised in the Federal suit. Finally, and of some significance, the printed "warning" contained in Respondents' claim rejection letters did not specify that Appellants were required to file an action in State court within six (6) months; the letter gave no indication that filing suit in Federal court would not comply equally with the statutory mandate."

The ***Addison*** court reiterated that the equitable tolling doctrine fosters the policy of the law of California, which favors avoiding forfeitures ***(@ pg. 321)***, and allowing good faith litigants their day in court. As with other general equitable principals, application of the equitable tolling doctrine requires a balancing of the injustice to the plaintiff occasioned by the bar of his claim against the effect upon the important public interest or policy expressed by the ***Tort Claims Act.*** See ***City of Long Beach vs. Mansell 3Cal.3d 462, 496-497 (1970);***

Driscoll vs. City of Los Angeles (1967) 67 Cal.2d 297. The balance must be struck in Plaintiff's favor. The doctrine on the other hand is not intended to substantially undermine the policy of prompt resolution of claims.

2. A *Significant Inter-Circuit Conflict* has *been created by the Ninth Circuit's abandonment Of The Interest of Federal Courts in Protecting federal Rights*

In Kaiser v. Cahn 510 F2d 282 (2nd Circ 1974) the Court of Appeals held that federal law determined whether application of a state statute of limitations and its tolling provision unduly impairs the federal interest sought to be enforced. In spite of the statute of limitations, the Court held that, when application of a state statute proves unfair, the federal court has the duty in a civil rights case, to find its own interpretation of the state statute under federal common law, since in ***Civil Rights Act (42 U.S.C. §1983)*** cases the statute of limitations goes to the remedy and not to the creation of the right. (Citing ***Bomar v. Keys 162 F2d 136, 140-141 [2d Circ. 1947]).*** The ***Kaiser*** court went on to say that, in applying federal law to a claim based on a federal statute, the court may prevent a result that would substantially impair a valid federal interest. Thus, a borrowed state statute of limitations, may be tolled in conformity with federal doctrine where the right is the creature of federal statute, ***Holmberg vs. Ambrecht 327 U.S., 392, 66 S.CT. 582 (1946).*** The ***Kaiser*** Court found that the reach of ***Holmberg vs. Ambrecht (supra),*** is not limited to suits in equity, but applies to actions at law as well, as was convincingly demonstrated by Judge Friendly in ***Moviecolor Ltd. vs Eastman Kodak, Co. 288 F2d 80 (2d Circ. 1961).*** The ***Kaiser*** court stated that civil rights claimants are entitled to, in the words of Mr. Justice Black, "full benefit of

Federal law". ***Garrett vs. Moore-McCormack, Co. 317 U.S. 239, 243, 63S.Ct. 246 (1942).*** In sum, the ***Kaiser*** court stated it was not necessarily bound by the state's determination of when its statute of limitations is tolled where the question arises in a civil rights claim in the federal court. ***Kaiser vs. Cahn (supra) 510 F2d @ 287.***

Federal courts in other circuits in applying the law of states which recognize the doctrine of equitable tolling have applied equitable tolling under the state law whether dismissal was voluntary or involuntary. ***Silva-Wiscovich v. Weber, 835F2d 409 (1st Circ. 1987) Montford V. Robins, 691 F.Supp.347 (GA 1988); Burke vs. Compagnie Nationale Air France, 699 F.Supp 1016 (IST Cir. PR 1988); Torres v. Padilla, 622F.Supp. 1276 (1st Cir PR 1985) Sherman v. Hercules, Inc. 636 F.Supp. 305 (W.D. Va. 1986).***

In ***Emrich v. Touche Ross & Co. 846 F.2d 1190 (9th Circ. 1988)*** equitable tolling was applied where the face of the complaint invoked state and federal equitable tolling doctrines by alleging the pendency of two (2) prior actions.

In ***Technical Consultant Services, Inc. v. Lakewood Pipe of Texas, Inc. 861 F.2d 1357 (C.A. 5 Tex. 1988)*** Plaintiff first filed in state court in Florida where it was determined that there was no jurisdiction over defendant. Plaintiff then filed in Federal District Court in Florida where it was also determined that there was no jurisdiction. Plaintiff then filed in Texas District Court. That court found that the ***"Texas Wrong Court"*** statute tolled the statute of limitations. The fact that the plaintiff filed suit in the Florida District Court in Florida after the Florida State Appellate Court found insufficient

contacts to establish personal jurisdiction over the Defendant did not show an intentional disregard of jurisdiction so as to preclude Plaintiff from taking advantage of the ***"Texas Wrong Court"*** statute to toll the statute of limitations when Plaintiff final filed suit in Texas District Court.

In ***Ross v. Colorado Outward-Bound School, Inc. 822 F.2d 1524 (C.A. 10 1987)*** Plaintiff commenced a wrongful death action in New York State court less than a year after the alleged negligence which occurred in Colorado. Then Plaintiff removed the case to the New York federal court on the grounds of diversity and transferred to the Colorado federal court nearly seven (7) years later for want of personal jurisdiction. The Colorado federal court held that the Plaintiff was not time-barred. Colorado had a two (2) year limitation period contained in the ***Colorado Wrongful Death Act*** which was applicable. Under that state's choice of law rules the action would **in the interest of justice** be treated as having been filed in Colorado on the date of removal to New York Federal Court and was thus timely.

B. A LITIGANT'S DESIRE TO LITIGATE STATE AND FEDERAL CLAIMS IN ONE FORUM IS IN THE INTEREST OF JUDICIAL ECONOMY RATHER THAN BAD FAITH.

The Ninth Circuit's opinion creates a conflict in the definition of "bad faith & reasonable conduct". The Ninth Circuit's determination to affirm the award of sanctions under Rule 11 of the ***Federal Rules of Civil Procedure*** is an abuse of discretion which is the standard under which such awards are measured. See ***Cooter & Gell v.***

Harmarx Corp. 496 U.S. 384, 405, 110 S.CT. 2447, 2461 (1990); see also United States v. Stringfellow, 911 F.2d 225, 226 (9th Cir. 1990). The Court elaborated that "[a] district court would necessarily abuse its discretion if it based its rule on an erroneous view of the law or on a clearly erroneous assessment of the evidence." ***Cooter & Gell , supra, 110S.Ct. At 2461;*** see also ***Teamsters Local Union No. 760 v. United Parcel Service, Inc. 921 F.2d 218, 219 (9th Cir 1990).***

Here, the district court abused its discretion by basing its Rule 11 determination on "an erroneous view of the law". The district court dismissed plaintiffs' complaint based on the running of the statute of limitations, where plaintiffs' complaint adequately alleges facts showing the potential applicability of California's equitable tolling doctrine. In the instant case, the Ninth Circuit affirmed the district court's dismissal of Petitioners' action based on an erroneous view of the law.

Even assuming the district court's view of the law was not erroneous, the court's clearly erroneous assessment of the evidence makes its award of sanctions an abuse of discretion. ***Rule 11*** sanctions are appropriate only when a paper filed in the district court is filed with an improper purpose or is "frivolous, legally unreasonable, or without factual foundation." ***Zaldivar v. City of Los Angeles, 780 F.2d 823, 830-31 (9th Circ 1986).*** The Ninth Circuit did not find that Petitioners had an improper purpose. Rather the court found Petitioners' complaint to be frivolous because

> "the complaint offers no reasonable basis for which an action could proceed. We cannot say that the district court abused its discretion in awarding

sanctions. A reasonable investigation would have revealed that the *§1983* claim was barred by the statute of limitations." (Appendix B)

II
CONCLUSION

This case brings into sharp focus the public policy questions regarding the extent to which states and their statutes of limitations will be permitted to interfere with a citizen's civil rights. In the instant case Petitioners had the right to Pursue federal civil rights claims in the federal court or in the state court. The Ninth Circuit has determined that Petitioners' decision to litigate both state claims and federal claims in the state court was bad faith and unreasonable conduct, thereby precluding the Petitioners being afforded the benefit of equitable tolling even where there is no prejudice to respondents demonstrated or alleged.

The court however, offered no standard for bad faith or unreasonable conduct.

For all of the reasons stated, petitioners pray that this court issue a writ of Certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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APPENDIX A

FILED
SEP 5 1997

Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ESTATE OF GIANNA BLUE; MARTHA WRIGHT-COX, individually and as Guardian ad Litem for Shauntonese Burris, Nakiya Brady and Lequan Buyard, minors; WIL WRIGHT; GREGORY JOHNSON; ERIC COLLINS; TERREL BEALEY; LONDELL HENDERSON; BARRY HAWES,

Plaintiffs-Appellants,

v.

COUNTY OF LOS ANGELES, a public entity; SHERMAN T. BLOCK, Sheriff, individually and as Sheriff of the County of Los Angeles; WILLIAM CHRISTIANSEN, Lieutenant of the Sheriff's Department of Los Angeles County; IRWIN GOLDEN; SHANNON

No. 96-55480

D.C. No. CV-95-08044-JMI

ORDER

LAREN, THOMAS DRAKE,
individually and in their official
capacities as Los Angeles County
Sheriff's Deputies,

Defendants-Appellees.

Before: SCHROEDER, BRUNETTI, and O'SCANNLAIN, Circuit Judges:

Appellants' motion for relief from late filing of petition for rehearing is GRANTED.

The panel has voted to deny appellants' petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is DENIED, and the suggestion for rehearing en banc is REJECTED.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ESTATE OF GIANNA BLUE; MARTHA WRIGHT-COX, individually and as Guardian ad Litem for Shauntonese Burris, Nakiya Brady and Lequan Buyard, minors; WIL WRIGHT; GREGORY JOHNSON; ERIC COLLINS; TERREL BEALEY; LONDELL HENDERSON; BARRY HAWES,
Plaintiffs-Appellants,

v.

COUNTY OF LOS ANGELES, a public entity; SHERMAN T. BLOCK, Sheriff, individually and as Sheriff of the County of Los Angeles; WILLIAM CHRISTIANSEN, Lieutenant of the Sheriff's Department of Los Angeles County; IRWIN GOLDEN; SHANNON LAREN, THOMAS DRAKE, individually and in their official capacities as Los Angeles County Sheriff's Deputies,
Defendants-Appellees.

No. 96-55480
D.C. No.
CV-95-08044-JMI
OPINION

Appeal from the United States District Court
for the Central District of California
James M. Ideman, District Judge, Presiding

Argued and Submitted
June 2, 1997—Pasadena, California

Filed July 21, 1997

Before: Mary M. Schroeder, Melvin Brunetti, and Diarmuid F. O'Scannlain, Circuit Judges.

Opinion by Judge O'Scannlain

SUMMARY

Individual Rights/Civil Rights

The court of appeals affirmed a judgment of the district court. The court held that equitable tolling does not apply to the statute of limitations for a federal civil rights claim that is refiled in federal court after a tactical voluntary dismissal and an adverse state-court adjudication.

On May 15, 1990, Gianna Blue was an innocent bystander who was shot dead by Los Angeles police officers responding to a holdup. Nine months later, appellant Estate of Blue and her survivors brought a federal civil rights action (*Blue I*) against appellee County of Los Angeles and others. The Estate's claims under 42 U.S.C. § 1983 survived a defense motion to dismiss; the district court declined to exercise supplemental jurisdiction over the state-law claims. Two months later, the Estate filed a state-court action (*Blue II*) against the same defendants alleging only the state-law claims.

Nine months passed without any activity on the *Blue I* § 1983 claim. During this period the County decided to seek clarification of the court's ruling on the dismissal motion, and eventually did so in June 1992. Without waiting for a ruling, the Estate requested voluntary dismissal of *Blue I* on July 24, 1992, and obtained it on August 5. Over a year had passed since the original ruling on the motion to dismiss, and *Blue II* was ten months old.

On July 30, 1992, just before the district court in *Blue I* granted the voluntary dismissal, the estate amended its com-

plaint in *Blue II* to add a § 1983 claim. The state court dismissed the action with prejudice on July 28, 1993. Affirming, the California Court of Appeal held that *Blue I* did not equitably toll the statute of limitations on the § 1983 claims. The California Supreme Court declined discretionary review.

On November 22, 1995, between the California appellate decisions, the Estate filed *Blue III*, which alleged against the same defendants the same claims asserted in *Blue I* and *Blue II*. The district court dismissed the action as barred by California's one-year statute of limitations. The court also imposed Fed. R. Civ. P. 11 sanctions against the Estate for filing a frivolous complaint. The Estate appealed.

[1] California has a three-pronged test for equitable tolling: there must be (1) timely notice to the defendant in the first claim; (2) lack of prejudice to the defendant in gathering evidence to defend against the second claim; and (3) good faith and reasonable conduct by the plaintiff in filing the second claim.

[2] The Estate had an opportunity to litigate the § 1983 claims in federal court in *Blue I*. Neither the court nor the defendants created barriers to obstruct a resolution on the merits. That the district court declined to exercise supplemental jurisdiction over the state-law claims did not alter the fact that the § 1983 claims remained alive and well in federal court. The Estate was not entitled by right to try the state-law claims and federal civil rights claims in a single proceeding. If the Estate wanted to try the civil rights claims in the same action as the state-law claims, it could have refiled all the claims in state court and asked the federal court for a stay. The estate relinquished its right to litigate in federal court at its peril. That it dismissed *Blue I* because it wanted to litigate all the claims in state court did not amount to "good faith and reasonable conduct" that would support tolling to allow the Estate back into federal court more than four years after the statute had run.

[3] The Estate created the problem by its procedural maneuvering. For reasons of its own choosing and after significant delay, the Estate abandoned its federal action and moved to state court. [4] The Estate may not have been pleased with the district court's decision in *Blue I* to decline supplemental jurisdiction; if so, it should have sought review of that decision when appropriate. The Estate took its chances when it dismissed its case, and it could not claim a right to return to federal court four years later because its tactical decision to go to state court turned out to be a mistake.

[5] Rule 11 provides for sanctions when a filing is frivolous. Frivolous filings are those that are both baseless and made without a reasonable and competent inquiry. When a reasonable investigation would reveal that a claim is barred, Rule 11 sanctions may be imposed. [6] A reasonable investigation would have revealed that the § 1983 claims were barred by the statute of limitations. It could not be said that the district court abused its discretion in awarding sanctions.

COUNSEL

Geraldine D. Green, Los Angeles, California, for the plaintiffs-appellants.

Steven J. Renick, Mannin Marder & Wolfe, Los Angeles, California, for the defendants-appellees.

OPINION

O'SCANNLAIN, Circuit Judge:

We must decide whether equitable tolling applies to a civil rights claim which was voluntarily dismissed in federal court, refiled and adjudicated in state court, and then filed again in federal court.

I

This is a tragic case. The complaint alleges that on May 15, 1990, Gianna Blue, an innocent bystander during a liquor store holdup and shoot-out, was fatally wounded by shots fired by Los Angeles County Sheriff's Deputies. The plaintiffs—Blue's estate and some of her relatives (collectively, "the Estate")—have filed a series of lawsuits against the County of Los Angeles and members of the County's Sheriff's Department ("the County"). This is the third lawsuit involving the same civil rights claims and these parties.

Nine months after the shooting, on February 8, 1991, the Estate filed a complaint against the County in federal district court for the Central District of California ("*Blue I*"), alleging civil rights claims under 42 U.S.C. § 1983 as well as civil RICO claims and state law claims. The County filed a motion to dismiss; on July 23, 1991, the district court denied the motion as to the § 1983 claims, dismissed the civil RICO claims with prejudice, and declined to exercise supplemental jurisdiction over the state law claims, dismissing them without prejudice.

Two months later, on September 23, 1991, the Estate filed a complaint against the same defendants in California Superior Court, alleging only the state law claims ("*Blue II*").

Meanwhile, in *Blue I*, nine months passed without any activity in federal court on the § 1983 claims. The Estate asserts that it did not pursue the litigation during this time because the County desired to seek clarification of the district court's ruling on the County's motion to dismiss. The County eventually sought clarification in June 1992, but on July 24, 1992, without waiting for any clarifying order from the district court, the Estate requested a voluntary dismissal of *Blue I*. The district court granted the dismissal on August 5, 1992. At that point, over a year had passed since the district court's ruling, and *Blue II* was ten months old.

On July 30, 1992, shortly before the court in *Blue I* granted the voluntary dismissal, the Estate amended the complaint in *Blue II* to add the § 1983 claims.[1] Following a series of demurrers and amendments to the complaint, the superior court dismissed *Blue II* with prejudice on July 28, 1993. The Estate appealed to the California Court of Appeal which affirmed on August 25, 1995, holding *inter alia* that *Blue I* did not equitably toll the statute of limitations on the § 1983 claims. The California Supreme Court declined to review the decision.

After the Court of Appeal decision but before the California Supreme Court declined to review *Blue II*, on November 22, 1995, the Estate filed this action in the district court for the Central District of California ("*Blue III*"). The Estate alleged the identical § 1983 claims at issue in *Blue I* and *Blue II* against the same defendants. The district court dismissed the complaint as barred by the statute of limitations and awarded Rule 11 sanctions against the Estate. The Estate filed this timely appeal.

II

[1] California's one-year statute of limitations for personal injury actions applies to the Estate's § 1983 claims, as do California's rules for equitable tolling. *Bacon v. City of Los Angeles*, 843 F.2d 372, 374 (9th Cir. 1988). California has developed a three-pronged test for invocation of the doctrine of equitable tolling: there must be "(1) timely notice to the defendant in the first claim; (2) lack of prejudice to [the] defendant in gathering evidence to defend against the second

[1]Counsel for the Estate represents that the district court dismissed *Blue I* on August 25, 1992, but records in the district court show the case as dismissed on August 5, as we note above. Regardless of the precise date of dismissal, we assume for the purposes of our decision that the district court entered the order of dismissal in *Blue I* after the § 1983 claim had been added to *Blue II*.

We emphasize that our decision turns on whether the Estate satisfies the "good faith and reasonable conduct" standard; we do not decide whether the simple fact that a plaintiff voluntarily dismisses a claim necessarily prevents the application of equitable tolling under California law. *See Appalachian Ins. Co. v. McDonnell Douglas Corp.*, 262 Cal.Rptr. 716, 740-41 (Ct. App. 1989) (holding that prompt and good faith voluntary dismissal of improperly removed action did not preclude application of equitable tolling). Nonetheless, we do not believe the California Supreme Court would use *Appalachian* to apply equitable tolling in cases where a claim had been pending for a long period and was then voluntarily dismissed and refiled, *e.g.*, *Bacon*, 843 F.2d at 374-75, or where the plaintiff delayed proceeding on the claim, *e.g.*, *Ervin*, 848 F.2d at 1020. Those circumstances generally indicate that the plaintiff, as here, was not acting reasonably and in good faith.

[4] The Estate may not have been pleased with the district court's decision in *Blue I* to decline supplemental jurisdiction; if so, it should have sought review of that decision when appropriate. Unfortunately, the Estate took its chances when it voluntarily dismissed its case, and it cannot claim a right to return to federal court four years later because its earlier tactical decision to go to state court turns out to have been a mistake.

III

[5] Federal Rule of Civil Procedure 11 provides for the imposition of sanctions when a filing is frivolous, legally unreasonable, or without factual foundation, or is brought for an improper purpose. *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170 (9th Cir. 1996). Frivolous filings are "those that are both baseless and made without a reasonable and competent inquiry." *Buster v. Greisen*, 104 F.3d 1186, 1190 (9th Cir. 1997) (quotation marks omitted). When a reasonable investigation would reveal that a claim is barred by res judicata or

court. The Estate was not entitled by right to try its state law claims and its federal civil rights claims in a single proceeding, and it did not challenge the district court's original ruling in *Blue I*. To be sure, the Estate may have hoped to gain a tactical advantage by trying all of the claims, state and federal, in a single state court action. Practical considerations—convenience and economy, for example—may also have persuaded the Estate to add the § 1983 claims to the state proceeding. If the Estate wanted to try the civil rights claims in the same action as the state law claims, it could have refiled all of the claims in the state court and asked the federal court for a stay of the federal action pending the outcome of the state court proceeding. *See Attwood v. Mendocino Coast Dist. Hosp.*, 886 F.2d 241, 244-45 (9th Cir. 1989); *see generally Quackenbush v. Allstate Ins. Co.*, 116 S. Ct. 1712, 1720-28 (discussing limited power of courts to use abstention doctrines to dismiss, rather than stay, cases). But the Estate relinquishes its opportunity to litigate in federal court at its peril; that it dismissed *Blue I* because it wanted to litigate all of its claims together in state court does not amount to "good faith and reasonable conduct" which would support tolling the statute of limitations to allow the Estate back in to federal court more than four years after the statute has run.

[3] As in *Ervin v. Los Angeles County*, 848 F.2d 1018, 1020 (9th Cir. 1988), *cert. denied*, 489 U.S. 1014 (1989), *Bacon*, 843 F.2d at 374-75, and *Mitchell v. Frank R. Howard Mem'l Hosp.*, 8 Cal.Rptr.2d 521 (Ct. App. 1992), the Estate regrettably created this problem by its procedural maneuvering. In each of those cases, the plaintiff jockeyed between one court and another to gain a perceived advantage and as a result did not satisfy the third prong of California's equitable tolling test. Likewise, for reasons of its own choosing and after a significant delay, the Estate abandoned its federal action and moved to state court. Its actions do not amount to "good faith and reasonable conduct," *Donoghue*, 848 F.2d at 931, warranting the application of equitable tolling.

claim; and, (3) good faith and reasonable conduct by the plaintiff in filing the second claim." *Donoghue v. County of Orange*, 848 F.2d 926, 931 (9th Cir. 1988) (citing *Collier v. City of Pasadena*, 142 Cal.App.3d 917, 922-24 (1983)); *see Cervantes v. City of San Diego*, 5 F.3d 1273, 1275 (9th Cir. 1993). The County does not contend that they did not receive timely notice or were prejudiced; instead, they argue that a voluntary dismissal of an action precludes application of equitable tolling and that the Estate did not act reasonably nor in good faith.

A

As an initial matter, the Estate argues that a statute of limitations question generally should not be decided on a motion to dismiss since it typically requires looking to materials outside of the pleadings. *See Cervantes*, 5 F.3d at 1276. In this case, however, the pleadings themselves contain a detailed account of the procedural history of the case, reciting the chronology of what happened at each stage of *Blue I* and *Blue II*. Moreover, we may properly take judicial notice of the papers filed in *Blue I* and *Blue II*—indeed, the Estate itself requested that we take judicial notice of the papers in *Blue I*. Finally, all facts necessary to decide whether equitable tolling applies are in the record. It therefore was not error to decide the statute of limitations question on a motion to dismiss.

B

[2] We next must determine whether the Estate satisfies the requirement of "good faith and reasonable conduct," *Donoghue*, 848 F.2d at 931. The Estate had an opportunity to litigate the § 1983 claims in federal court in *Blue I*. Neither the court nor the defendants created barriers to obstruct a resolution of the claims on the merits. *See Bacon*, 843 F.2d at 374. That the district court declined to exercise supplemental jurisdiction over the state law claims does not alter that fact—the § 1983 claims remained alive and well in the federal

collateral estoppel, for example, Rule 11 sanctions may be imposed within the district court's discretion. *See id.*

[6] In this case, the district court determined that "Plaintiffs' Complaint is frivolous, and therefore, is subject to Rule 11 sanctions. Based on the procedural history of this case, Plaintiffs' Complaint offers no reasonable basis for which an action could proceed." We cannot say that the district court abused its discretion in awarding sanctions. A reasonable investigation would have revealed that the § 1983 claim was barred by the statute of limitations.

AFFIRMED.

APPENDIX C

FILED
Clerk, U.S. District Court
FEB 21, 1996

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ESTATE OF GIANNA BLUE, et al.,

Plaintiffs,

v.

COUNTY OF LOS ANGELES, et al.,

Defendants.

CV-95-8044 JMI (RMCx)

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

ORDER DISMISSING NON-MOVING DEFENDANTS

ORDER GRANTING DEFENDANTS' MOTION FOR SANCTIONS

IT IS HEREBY ORDERED:

Defendants county of Los Angeles, et al.'s Motion to Dismiss and Motion for Sanctions came before this Court for review on February 12, 1996. The Court hereby GRANTS both motions. Moreover, the Court DISMISSES all non-moving Defendants.

BACKGROUND

Gianna Blue was killed May 15, 1990, by sheriffs' Deputies when she was struck by a bullet which passed through an armed gunman at a liquor store in Los Angeles. The Estate of Gianna Blue, members of her family, a friend and several liquor store employees who were present at the time of the shooting, and the owner of the liquor store (collectively, "Plaintiffs") filed suit against the County of Los Angeles and various employees of the County ("Defendants").

On February 8, 1991, Plaintiffs filed a complaint in the Court alleging violations of civil rights and civil RICO in addition to pendent state claims. On July 25, 1991, this Court GRANTED Defendants' motion to dismiss the civil RICO claim and the pendent state claims. On July 24, 1992, this Court GRANTED Plaintiffs' request for an order voluntarily dismissing the federal action in its entirety.

On September 23, 1991, Plaintiffs filed a complaint against Defendants in state court. On July 30, 1992, Plaintiffs filed a First Amended Complaint, adding a cause of action for a violation of civil rights. The Defendants demurred to the complaint on the grounds that the statute of limitation had run and that the complaint did not make sufficient allegations to state a cause of action under section 1983. The demurrer was sustained on all grounds with twenty days leave to amend. Defendants successfully demurred to the Second Amended Complaint and Plaintiffs moved for reconsideration. The superior court granted the motion for reconsideration as to the federal civil rights action, allowing Plaintiffs to file a Third

Amended Complaint. The motion was denied as to the state claims.

The superior court sustained demurrers without leave to amend as to a portion of the Defendants and the remainder of the demurrers were sustained with twenty days leave to amend.

The Defendants' demurrer to the Fourth Amended complaint was sustained without leave to amend and an Order of dismissal was entered July 28, 19932.

Plaintiffs motion to vacate the order granting the demurrer to the Fourth Amended Complaint and for leave to file a Fifth Amended Complaint was denied with prejudice. The court found that Plaintiffs' counsel had acted in bad faith and used frivolous tactics and awarded Defendants a sanction in the amount of $1,063.44.

On August 23, 1995, the California Court of Appeal affirmed the order of dismissal, the order denying the motion to vacate, and the order imposing sanction. The California Supreme Court denied Plaintiffs' petition for review.

Plaintiffs now have refiled their action for a violation of civil rights. However, their Complaint is substantially similar to their First Amended Complaint in this Court against the same Defendants and their Fourth Amended Complaint in the state court. Defendants Los Angeles County, Deputy Thomas Drake, and Deputy Shannon Laren move this Court to dismiss the action with prejudice on the grounds that Plaintiffs' causes of action

are barred by the statute of limitations and that they are barred by the doctrine of res judicata and collateral estoppel.

Defendants also move this Court to grant their request for a sanction in the amount of $2,176 for attorneys' fees.

On February 1, 1996, the Department of the Coroner joined the motion to dismiss and the request for sanctions.

DISCUSSION

A. MOTION TO DISMISS

1. Statute of Limitations

Plaintiffs assert claims under 42 U.S.C. Sections 1983 and 1985. See Complaint, p. 2. Civil rights violations have been characterized as personal injury actions and are subject to the statute of limitations applicable to claims of personal injury. Wilson v. Garcia, 471 U.S. 261 (1985). Personal injury actions in California are bound by a one year statute of limitations. Cal. Civ. Pro. Code Sec. 340(3) (West Supp. 1996).

Plaintiffs' causes of action occurred on or about May 15, 1990. See Complaint, p. 2. Plaintiffs filed this Complaint on November 22, 1995, which is more than five years and six months after the accrual of the causes of action. This span of time exceeds the one year statute of limitations for these causes of action. As a result, the Complaint fails to state a claim because the action is time-

barred. Jablon v. Dean Witter & Co., 614 F.2d 677 (9th Cir. 1980).

2. Equitable Tolling

Plaintiffs argue that the doctrime of equitable tolling applies and, therefore, these actions are not barred by the statute of limitations. See Plaintiffs' Opposition to Motion to Dismiss, pp. 13-18. Equitable tolling requires timely notice, lack of prejudice to the defendant, and reasonable and good faith conduct on the part of the plaintiff. Addison v. State, 21 Cal.3d 313, 319 (1978).

In this case, the Court does not apply equitable tolling to the Plaintiffs. After maintaining these actions for eighteen months in this court, Plaintiffs voluntarily dismissed these actions in their entirety and added them to their state court claims. After exhausting these actions in state court, Plaintiffs now have refiled in this court, some five and a half years after the original causes of action arose and after the statute of limitations has passed. Therefore, this is not a situation created by the defendants' or the Court's actions which may invoke equitable tolling. Rather, Plaintiffs created this predicament in which their actions are time barred. Moreover, a voluntary dismissal without prejudice allows the statute of limitations to run and bars the right to a new action. Humphreys v. United States, 272 F.2d 411 (9th Cir. 1959).

3. Sua Sponte Dismissal of Remaining Defendants

The remaining Defendants, Sheriff Sherman Block and Lieutenant William Christiansen, have not yet joined in

the motion to dismiss. However, the Court sua spointe dismisses Plaintiffs' claims against the remaining Defendants. A court may dismiss a complaint on its own initiative for failure to state a claim, where the inadequacy of the complaint is apparent as a matter of law. Shawnee Int'l N.V. v. Hondo Drilling Co., 742 F.2d 234 (5th Cir. 1984). Furthermore, the Court his discretion to dismiss other nonmoving defendants if their position is similar to that of the moving defendants or the defendants' claims are integrally related. Bonny v. Society of Lloyd's, 3 F.3d 156, 161 (7th Cir. 1993).

4. Conclusion

The Court GRANTS Defendants' motion to dismiss with prejudice. Additionally, the Court sua sponte dismisses with prejudice the claims against the remaining Defendants.

B. RULE 11 SANCTIONS

Defendants argue that Plaintiffs' filing a Complaint with this court is in bad faith and is for the sole purpose of harassing Defendants. As a result, Defendants have filed a motion to sanction Plaintiffs and/or their attorneys under Federal Rules of Civil Procedure 11 ("Rule 11").

Rule 11 is intended to deter dilatory or abusive pretrial tactics and to streamline litigation by excluding baseless filings. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990). Rule 11 sanctions are proper for papers filed with the Court that are frivolous, legally unreasonable, or without factual foundation. Moreover,

the papers need not be filed in subjective bad faith. Zaldivar v. City of Los Angeles, 780 F.2d 823 (1986).

Plaintiffs' Complaint is frivolous, and therefore, is subject to Rule 11 sanctions. Based on the procedural history of this case, Plaintiffs' Complaint offers no reasonable basis for which an action could proceed.

Defendants' requested sanctions are for Plaintiffs to pay a penalty to the Court and/or to impose a sanction for reasonable attorneys' fees. See Defendants' Memorandum, p. 8. Defendants calculate their fees to be $2,312. See Defendants' Memorandum, Declaration of Dennis Gonzales, Par. 19. Therefore, the Court GRANTS Defendants' motion for an attorneys' fees sanction in the amount of $2,312.

IT IS SO ORDERED.

Dated: 2/20/96.

/s/ James M. Ideman
James M. Ideman
United States District Judge

APPENDIX D

Second Appellate District, Division Three,
No. B081807
S049264

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
F I L E D
DEC 13 1995
ROBERT WANDRUFF CLERK

ESTATE OF GIANNA BLUE Et Al., Petitioners

v.

COUNTY OF LOS ANGELES Et Al., Respondents

Petition for review DENIED.

LUCAS

Chief Justice